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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,093	09/28/2001	Kirk D. Brannock	042390.P11898	6662

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R. Alan Burnett  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP  
Seventh Floor  
12400 Wilshire Boulevard  
Los Angeles, CA 90025-1026

EXAMINER

ZHEN, WEI Y

ART UNIT

PAPER NUMBER

2122

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/967,093	Applicant(s) BRANNOCK ET AL.	
	Examiner Wei Y Zhen	Art Unit 2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-13, 15-25, 27-29 is/are rejected.
- 7) ☒ Claim(s) 7, 14 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. This office action is in response to the application filed on 9/27/2004.
2. Claims 1-29 are pending.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-13, 15-25, 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Ishii et al, U.S. Patent No. 5,835,761 (art of record).

As per claim 1, Ishii discloses

writing updated firmware data that is to replace the original portion of platform firmware data to a firmware storage device (col. 3 lines 22-27);

and atomically modifying firmware configuration data to indicate the updated firmware data is to be used in place of the original portion of platform firmware data that is being updated such that only all of the original portion of platform firmware data are valid prior to the atomic modification of the firmware configuration data and only all of the updated firmware data are valid after the atomic modification to the firmware configuration data (col. 3 lines 22-55, col. 9 lines 30-67, and col. 10 lines 24-36).

As per claim 2, Ishii et al discloses

performing an integrity check of the updated firmware data to verify that the updated firmware data is valid (col. 13 lines 41-65).

As per claim 3, Ishii et al discloses

the updated firmware data is written to the firmware storage device in a manner in which the updated firmware data is invisible to a firmware management system used to access firmware data stored on the firmware storage device until the atomic modification of the firmware configuration data has been made (col. 10 lines 24-36).

As per claim 4, Ishii et al discloses

enabling a full recovery of the original portion of firmware data that is to be updated during an upgrade process in response to a system anomaly that prevents completion of the upgrade process (col. 3 lines 39-55 and col. 9 lines 15-30).

As per claim 5, Ishii et al discloses deleting the original portion of platform firmware after it has been upgraded (col. 3 lines 22-55, col. 9 lines 30-67, and col. 10 lines 24-36).

As per claim 6, Ishii et al discloses wherein the original platform firmware data and the updated firmware data respectively comprise one or more firmware files, each firmware file including header data that are modified during the update process to track a current state of that file (col. 9 lines 41-59).

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As per claim 8, Ishii et al discloses

wherein the firmware storage device comprises a flash memory device (Fig. 5).

As per claim 9, Ishii et al discloses

creating a temporary file (col. 10 lines 4-5); writing data corresponding to a plurality of updated platform firmware files comprising new versions of the plurality of original platform firmware files to the temporary file (col. 3 lines 22-27); and atomically modifying platform firmware file configuration information to indicate that the updated platform firmware files are to be used in place of the original platform firmware files such that only all of the original platform firmware files or only all of the updated platform firmware files are valid at any point in time during an update process (col. 3 lines 22-55, col. 9 lines 30-67, and col. 10 lines 24-36).

As per claim 10, Ishii et al discloses each platform firmware file comprises a file header and a data area in which platform firmware data corresponding to that file is written, and wherein each file header includes a plurality of state bits that are used to track a current state of each platform firmware file during the update process (col. 9 lines 41-59).

As per claim 11, Ishii et al discloses the temporary file is created by creating a file header that identifies the temporary file includes a data area that is sized to hold all of the updated platform firmware files, said data area being mapped to a memory area on a firmware storage device that is used to store the original and updated platform firmware files (col. 3 lines 22-55, col. 9 lines 30-67, and col. 10 lines 24-36).

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As per claim 12, Ishii et al discloses changing a state bit in the temporary file's file header to indicate that the temporary file is invalid after data corresponding to the updated platform firmware files are written to the data area of the temporary file (col. 9 lines 41-59).

As per claim 13, Ishii et al discloses a file system is used to access the platform firmware files and the updated firmware files appear invisible to the file system prior to when the state bit is changed and become visible to the file system after the state bit is changed (col. 10 lines 24-36).

As per claim 15, Ishii et al discloses performing an integrity check of the updated platform firmware files to verify that the updated firmware files are valid prior to atomically modifying the platform firmware file configuration information to indicate that the updated platform firmware files are to be used in place of the original platform firmware (col. 13 lines 41-65).

As per claim 16, Ishii et al discloses enabling a full recovery of the original platform firmware files that are to be updated during the upgrade process in response to a system anomaly that prevents completion of the upgrade process (col. 3 lines 39-55 and col. 9 lines 15-30).

As per claim 17, Ishii et al discloses setting the state bits in each file header of the original platform firmware files to indicate the file is deleted after the upgrade process has been complete (col. 3 lines 22-55, col. 9 lines 30-67, and col. 10 lines 24-36).

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Claims 18, 19, 20 are rejected for the reason set forth in the rejections of claims 1, 2, 4 respectively.

Claims 21-25, 27-29 are rejected for the reason set forth in the rejections of claims 9-13, 15-17 respectively.

*Response to Arguments*

4. Applicant's arguments filed on 9/27/2004 have been fully considered but they are not persuasive.

Applicant's argument:

1) Claim 1 pertains to "a method for atomically updating an original portion of platform firmware data", but Ishii updates the entire BIOS program.

Examiner's response:

1) Ishii discloses updates BIOS programs which needs to be updated. It is inherent that the BIOS programs could be either the entire program or just a part of it depends on whether it needs to be updated or not.

Applicant's argument:

2) The portion of firmware maybe stored in a single device, such as flash memory, or across multiple devices, using an Extensible Firmware Interface (EFI). There was no scheme for supporting an extensible firmware environment prior to EFI. Such an environment is not disclosed by Ishii.

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Examiner's response:

2) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. "using an Extensible Firmware Interface (EFI)") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's argument:

3) Ishii does not disclose updating multiple platform firmware files as recited in claim 9.

Examiner's response:

3) Ishii discloses updates programs which needs to be updated. It is inherent that the programs could be either the entire program or a multiple files depends on whether which one needs to be updated or not.

#### ***Allowable Subject Matter***

5. Claims 7, 14, 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wei Y Zhen whose telephone number is (571) 272-3708. The examiner can normally be reached on Monday-Friday, 8 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wei Zhen

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Primary Examiner

1/3/2005

A handwritten signature in black ink, appearing to read 'W. Y. Zhen', with a stylized flourish at the end.

**WEI Y. ZHEN**  
**PRIMARY EXAMINER**